IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2102 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)

Versus

ISMAIL ABHRAM CHORWADI - Respondent(s)

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Appearance :
Ms.Rita Chandarana, AGP for Petitioner(s) : 1 - 2.
DS AFF.NOT FILED (R) for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 18/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner – State of Gujarat has challenged the judgment and award dated 21.06.1999 passed by the Presiding Officer, Labour

Court, Junagadh in Reference (LCJ) No. 1333 of 1990, by which the Labour Court allowed the reference and directed the petitioner to reinstate the respondent – workman with continuity of service and also directed the petitioner to pay the full back wages for the intervening period.

2. This Court (Coram : H.K.Rathod, J) passed the order on 29.03.2000 which reads as under :

> "In this petition, caveat has been filed by the Ld.Advocate Mr.Trivedi on behalf of the Respondent. Lits has been revised twice but none has appeared on behalf of the caveator. Heard Ld.AGP Mr.H.H.Patel for the petitioner. Rule. Ad-IR in terms of para 4(c) on a condition that the petitioner shall reinstate the respondent in service within the period of 3 weeks from today and shall also pay full wages from 21.6.99 till the date of actual reinstatement within six weeks from today. Notice as to IR returnable on 26.4.2000."

3. Today, at the time of hearing of this petition, Ms.Rita Chandarana, learned AGP has submitted that in pursuance

of the interlocutory order passed by this Court dated 29.03.2000, the respondent – workman has been reinstated in service from 11.04.2000. She further submitted that against the aforesaid order, the petitioner herein had preferred Letters Patent Appeal No. 167 of 2003 before the Division Bench and the Division Bench (Coram : J.N.Bhatt and K.A.Puj, JJ) by its order dated 25.03.2000 stayed the interim order dated 29.03.2000 so far as it relates to full back wages in favour of the respondent – workman.

4. Now, the question which requires to be decided by this Court is in respect of back wages in favour of the respondent – workman. The Labour Court has come to the conclusion that the respondent – workman had worked for 365 days, 353 days and 355 days in the year 1981, 1982 and 1984 respectively and accordingly the respondent – workman had worked for more than 240 days in a year. The Labour Court also came to the conclusion that there is a breach of the mandatory provisions of Section 25-F and 25-H of the Industrial Disputes Act, 1947 (“the Act” for short). The Labour Court has also recorded the petitioner herein has also not produced any record showing that the petitioner has called for the explanation of the respondent – workman for remaining

absent or that the petitioner has not issued any notice or memo and therefore, the Labour Court has not believed the say of the petitioner that the respondent on his own had stopped working with the petitioner. It is also recorded by the Labour Court that the respondent – workman is without any job and he is ready and willing to do the work as stated in his deposition and thus he is not in the gainful employment. Under the circumstances, the Labour Court, after considering the evidence on record, had awarded full back wages in favour of the respondent – workman.

5. Considering the facts and circumstances of the case and more particularly, the fact that the respondent – workman was not gainfully employed during the intervening period and even this aspect has not been established by the petitioner, it would meet the ends of justice if the respondent – workman is awarded 40% back wages for the intervening period instead of full back wages as awarded by the Labour Court by its judgment and award dated 21.06.1999.

6. In the result, this petition is partly allowed. The judgment and award of the Labour Court dated 21.06.1999 is modified to the extent that instead of full back wages, the petitioner is directed to pay 40% back wages

to the respondent – workman within a period of two months from the date of the order. Rule is made absolute to the aforesaid extent with no order as to costs.

(SHARAD D DAVE, J)

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